KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
DALE F. KINSELLA (SBN 063370)
dkinsella@kwikalaw.com
GREGORY P. KORN (SBN 205306)
gkorn@kwikalaw.com
GREGORY S. GABRIEL (SBN 239902)
ggabriel@kwikalaw.com
808 Wilshire Boulevard, 3rd Floor
Santa Monica, California 90401
Telephone: 310.566.9800
Facsimile: 310.566.9850

Attorneys for Plaintiff ROAR, LLC

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROAR, LLC, a California limited liability company, Plaintiff, vs. ROAR GLOBAL LIMITED, a United Kingdom entity of unknown form, dba ROAR GLOBAL; and DOES 1 through 10, inclusive, Defendants.	Case No. 2:15-cv-05865-ODW-AFM **PLAINTIFF ROAR, LLC'S NOTICE OF MOTION AND MOTION FOR TERMINATING SANCTIONS, ENTRY OF PERMANENT INJUNCTION, AND AWARD OF ATTORNEYS' FEES; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS OF GREGORY KORN AND GREGORY SUESS IN SUPPORT THEREOF** **DISCOVERY MATTER To Be Heard By The Hon. Alexander F. MacKinnon** [Proposed Order and Proposed Judgment filed contemporaneously herewith] Date: Sep. 27, 2016 Time: 10:00 a.m. Crtrm.: H Trial Date: Feb. 28, 2017 Pre-Trial Conf. Jan. 30, 2017 Fact Discovery Cut-Off: Nov. 28, 2016

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 27, 2016 at 10:00 a.m., in Courtroom H of the above-captioned court, located at 312 N. Spring St., Los Angeles, California 90012, Judge Alexander F. MacKinnon presiding, Plaintiff ROAR, LLC ("Plaintiff") will and hereby does move for an order recommending that the District Court (1) impose a terminating sanction pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure by striking the Answer of Defendant ROAR Global Limited ("Defendant") and entering default judgment, (2) enter a permanent injunction, and (3) award Plaintiff its attorneys' fees pursuant to 15 U.S.C. § 1117.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of Gregory Korn and Gregory Suess (and supporting exhibits), all records and pleadings on file with the Court in this action, and on such further evidence and argument as may be presented at or before the time of hearing.

This motion is made following a conference of counsel pursuant to L.R. 7-3. *See* Declaration of Gregory Korn, ¶ 22.

DATED: August 30, 2016

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

By: /s/ Gregory Korn
Gregory P. Korn
Attorneys for ROAR, LLC

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For the *second* time, Defendant ROAR Global Limited ("Defendant") has willfully defied a Court order compelling it to respond to discovery. This time, Defendant's contempt is even more brazen than the last. The Court's August 10, 2016 Order required that Defendant (1) supplement its written discovery responses and produce documents no later than August 17, 2016, (2) produce its principal, Jonathan Shalit, for deposition in the United States no later than August 24, 2016, and (3) pay monetary sanctions to Plaintiff ROAR, LLC ("Plaintiff") because of its violation of a previous order compelling further discovery. Defendant refuses and has failed to comply with *any* of these orders and *expressly* stated that it has no intention of doing so. In an August 17, 2016 phone call, Defendant's counsel indicated that in spite of his best efforts, Defendant simply refuses to comply with the Court's August 10 order. Moreover, Mr. Shalit has himself made clear in emails sent directly to Plaintiff's principals that he has no intention of complying with the August 10 order (or any other orders of this Court) because he believes Plaintiff, as a UK-based company, is immune. Thumbing his nose at the Court's order, Mr. Shalit wrote to Plaintiff's principals that "[y]ou are mistaken to think the [Court's] Orders will be enforced in the UK or that you will recover any of your legal fees."

This Court wanted to determine whether lesser sanctions would persuade Defendant to comply with its discovery obligations. They did not; and it is now clear that *nothing* will induce Defendant to take its obligations in this case seriously.

Nothing less than a terminating sanction will suffice to alleviate the unfair prejudice Plaintiff is suffering due to Defendant's willful discovery violations. Plaintiff asserts meritorious claims in this case that Defendant is using the *same* registered trademark (*i.e.*, ROAR) to provide the *same* services (*i.e.*, talent management services) to the *same* types of clients (*e.g.*, actors and musicians). Defendant's lone defense is that it is based in London and does not conduct substantial business in the United States. Plaintiff has evidence that this is false. Indeed, one of the 28 pages of documents that Defendant produced in this case as part of its deficient document production states that Defendant has formed "strategic partnerships" with "US [talent] agencies William Morris Endeavor, and Octagon." Nevertheless, as a result of Defendant's discovery violations and contempt of the Court's orders, Plaintiff has been unable to discover the full nature and extent of Defendant's activities in this country, it has been unable to discover whether Defendant's infringement of the ROAR trademark was intentional (or at least with knowledge of Plaintiff's rights), and it has been unable to discover the consumer confusion that is occurring. Further, Defendants' obstructionism has prevented Plaintiff from discovering the profits that Defendant is earning in connection with its infringement, which profits could be subject to disgorgement under the Lanham Act.

In assessing whether a terminating sanction is appropriate, the most critical factor is "truth"—to wit, "whether the discovery violations threaten to interfere with the rightful decision of the case." *Connecticut General Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir. 2007). That is unquestionably the case here. Defendant is willfully violating this Court's orders to prevent Plaintiff from establishing its trademark infringement claims and from demonstrating the monetary relief to which it is entitled. Only a terminating sanction will alleviate the prejudice to Plaintiff, and anything less will *reward* Defendant for its calculated defiance of the Court's orders.

Pursuant to Rule 37(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests that this Court issue a report and recommendation to the District Court that it (1) impose terminating sanctions by striking Defendant's answer and entering default judgment, (2) enter a permanent injunction, and (3) award Plaintiff its attorneys' fees and costs.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff Filed Meritorious Claims For Trademark Infringement

Plaintiff is a well-known talent management firm with its main office in Beverly Hills, California. Plaintiff owns U.S. Trademark Registration No. 3,015,285 for the use of the ROAR trademark ("Trademark" or "Mark") in connection with talent management services. *See* Dkt. No. 1, ¶¶ 8-9; *see also* Declaration of Gregory Suess, ¶¶ 2-4.

Defendant is likewise a talent management firm, with its headquarters in London. *See* Dkt. No. 1 ¶¶ 12-15; Declaration of Gregory Korn, Exh. 7 (Def.'s Supplemental Response to Interrogatory No. 5). Defendant previously operated under the name "Shalit Global." *See* Korn Decl., Exh. 9, p. 1. In or about 2009 or 2010, Defendant adopted and began using the Trademark to provide the exact same services that Plaintiff provides, to the exact same types of clients. *See* Dkt. No. 1, ¶¶ 12-16; Korn Decl., Exh. 7 (Def.'s Supplemental Response to Interrogatory No. 5) and Exh. 9, p. 1.

Though based in London, Defendant has a social media presence in the U.S., including a website and Twitter page. *See* Dkt. No. 1, ¶¶ 16. Moreover, before it filed this action, Plaintiff was made aware that Defendant and its employees were marketing to U.S. based companies and conducting business here, including California specifically. For example, Plaintiff received a copy of a 2014 email chain in which Defendant's principal, Jonathan Shalit, was communicating with Ron Fair, a music executive based in the U.S. *See* Suess Decl., ¶ 6, Exh. 11. Mr. Shalit was then put in touch with Randy Phillips, the former CEO of Los Angeles-based AEG Live, with whom he requested a meeting in London or "in LA," where he was traveling shortly thereafter. *See id.*

Similarly, Plaintiff received a copy of an email from Defendant's employee, Archie Lamb, to a talent agent at United Talent Agency ("UTA"), a large talent agency based in Los Angeles. Mr. Lamb claimed to "run the music department at

ROAR." *See* Suess Decl., ¶ 6, Exh. 11. He stated that he was "coming to LA on 9th October" and requested a meeting.

In addition to these emails, Plaintiff was also privy to several instances in which people in the entertainment industry had been confused into believing that Plaintiff and Defendant were one in the same as the result of their use of the identical Trademark in connection with the identical types of services. *See* Suess Decl., ¶ 9, Exh. 12.

Before filing suit, Plaintiff's counsel attempted to work out an informal resolution with Defendant. When it became clear that Defendant would not cooperate in ceasing to use the Mark, Plaintiff filed this action for trademark infringement in violation of the Lanham Act. *See* Dkt. No. 1. The Complaint alleges, *inter alia*, that Plaintiff owns a valid, registered trademark in ROAR; that the Mark is well known and associated with Plaintiff as the result of its extensive use; that Defendant is using the identical Mark in providing talent management services in the United States and elsewhere; that Defendant's use of the Mark is likely to and has in fact confused consumers; and that Defendant adopted the Trademark willfully, with specific knowledge of, and in reckless disregard of, Plaintiff's trademark rights. Dkt. No. 1, ¶¶ 9, 11-15, 17, 20.

B. Defendant's Systematic, Willful Disregard Of Its Discovery Obligations And Court Orders Regarding The Same

In denying Plaintiff's claims, Defendant's primary contention is that it does not conduct significant business in the U.S. and therefore cannot be found liable for violation of the Lanham Act. *See* Dkt. No. 13. Accordingly, starting in January 2016, Plaintiff served discovery to obtain basic information concerning Defendant's use of the Trademark in the U.S. and any confusion that has resulted.

Plaintiff served a First Set of Interrogatories ("Interrogatories") that sought information concerning, among other things, the services Defendant provides here, the U.S. based companies with whom it has communicated, and the instances in

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

which its talent managers have traveled here to conduct business. *See* Korn Decl., Exh. 1. In addition, Plaintiff served a First Set of Requests for Production of Documents ("Document Requests") seeking, among other things, documents relating to Defendant's selection of the Mark, its use of the Mark in the U.S., its communications with U.S. based companies, and any confusion that has occurred. *See* Korn Decl. Exh. 2.

As discussed below, Defendant has repeatedly dodged these discovery requests; it has violated *two* court orders requiring compliance with them; it has violated a court order requiring that Defendant's owner, Mr. Shalit, appear for deposition in the U.S.; and it has violated a court order mandating the payment of monetary sanctions. Moreover, Defendant has made clear that these violations are knowing and calculated, owing to its belief that it can escape the consequences of its infringement of Plaintiff's mark because it is based in the U.K.

1. Defendant Willfully Fails to Comply With Its Discovery Obligations

After Plaintiff served the Interrogatories and Document Requests described above, and after defense counsel was afforded several extensions to accommodate a vacation schedule and other conflicts, Defendant served responses to this initial round of discovery on or about April 15, 2016. *See* Korn Decl., Exhs. 3-4. The responses were woefully deficient. Defendant's responses to the Interrogatories consisted predominantly of objections. *See* Korn Decl., Exh. 3. In response to the Document Requests, Defendant served blanket objections to many of the requests. *Id.*, Exh. 4. And though Defendant agreed to produce documents in response to several of the requests, no documents were actually produced. Korn Decl. ¶ 3.

2. Defendant's *Second* Willful Failure To Comply With Its Discovery Obligations

On or about May 19, 2016, Plaintiff's counsel, Gregory Korn, sent Defendant's counsel, Bruce Isaacs, a meet-and-confer letter describing the

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

deficiencies in Defendant's discovery responses. *See* Korn Decl. Exh. 5. Messrs. Korn and Isaacs subsequently spoke on the phone and seemingly resolved the dispute. *Id.* ¶ 5. On May 31, 2016, defense counsel, Mr. Isaacs, sent Mr. Korn a letter summarizing Defendant's agreement to respond fully to the Interrogatories and to produce documents, all by June 27, 2016. *Id.*, ¶ 5, Exh. 6.

Despite the agreement reached by the parties' counsel, the June 27, 2016 deadline came and went, and Plaintiff received nothing from Defendant. Korn Decl. ¶ 6. Mr. Korn contacted Mr. Isaacs, who assured Mr. Korn that he was doing everything in his power to obtain his client's compliance with discovery, but Defendant was simply refusing to provide the information and documents that it had promised. *Id.* Thus, as of June 27, 2016, Defendant had not produced a *single document* in the case. *Id.*

3. The Court Orders Defendant To Supplement Its Discovery Responses And Document Production

On Plaintiff's application, the Magistrate Judge in this case, the Honorable Alexander F. MacKinnon, granted an order compelling Defendant to fully respond to the Interrogatories and Document Requests (the "First Discovery Order"). *See* Dkt. No. 24. The Order required Defendant to supplement its written responses to the Interrogatories and Document Requests and respond fully thereto. *Id.* The Order further required Defendant to produce documents and a privilege log. *Id.* All of this was to completed by July 27, 2016. *Id.* The Order denied Plaintiff's request for monetary sanctions without prejudice to Plaintiff's right to re-file the request in light of Defendant's compliance (or lack thereof) with the Order. *Id.*

4. In Its *Third* Willful Discovery Violation, Defendant Defies This Court's Order To Compel

In a telephonic hearing prior to the issuance of the First Discovery Order, the Magistrate Judge directly warned defense counsel (Mr. Isaacs) that he was inclined to award sanctions and instructed Mr. Isaacs to caution his client. *See* Korn Decl. ¶

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

7. Defendant was apparently unimpressed. It blatantly defied the Order. While Defendant did serve supplemental responses and produce documents on July 27, 2016, the responses and document production were so patently deficient as to essentially mock the First Discovery Order. *See* Korn Decl., Exhs. 7-9.

Regarding the Interrogatories, Defendant failed to provide the specific information requested by the Interrogatories and refused altogether to respond to two of the more important requests (Interrogatory Nos. 7 and 8), which asked Defendant to describe its business travel to the U.S. and to identify the U.S. based companies with whom it has communicated. *See* Korn Decl., Exh. 7. Further, Defendant's production of documents was a farce. The production totaled just 28 pages, constituting the lowest of the "low hanging fruit" that Defendant could scrape together in five minutes or less. *See* Korn Decl. Exh. 9.

Deficient as it was, the first page of Defendant's 28-page production is proof positive that Defendant is concealing information and understating the business it conducts here. That first document is a press release announcing Defendant's name change from Shalit Global to ROAR Global. *See* Korn Decl., Exh. 9 at 1. It touts that "[s]trategic partnerships have … been formed with US [talent] agencies William Morris Endeavor, and Octagon." *Id.* Yet, Defendant did not produce a single communication with these U.S.-based "strategic partners," nor with the many other companies based here with whom it is no doubt communicating.

5. The Court Sanctions Defendant For Its Violation Of The First Discovery Order

Plaintiff moved for sanctions promptly after receiving Defendant's deficient responses. *See* Dkt. No. 29. Pursuant to Rule 37(b)(2), Plaintiff sought evidentiary and/or terminating sanctions, as well as monetary sanctions, against Defendant. Defendant's opposing papers conceded that it violated the First Discovery Order and put up little resistance to the Motion other than to state that lesser sanctions should issue before an evidentiary or terminating sanction is imposed. *See* Dkt. No. 31.

On August 10, 2016, the Magistrate Judge issued an order sanctioning Defendant (the "Sanctions Order"). *See* Dkt. No. 34. The Court concluded that there was "no dispute that Defendant has not fully complied with the Order." *Id.* at 3. The Court found that "Defendant's failure to comply with the Order lack[ed] substantial justification." *Id.* at 4. The Court therefore granted sanctions in the amount of $8,137.00—the cost incurred to prepare the sanctions motion. *Id.*

The Court declined to impose an evidentiary or terminating sanction. The Court explained:

> While there have been multiple discovery violations by the Defendant, this is the first instance where Defendant has failed to comply with a discovery order of the Court. That does not minimize the seriousness of Defendant's repeated instances of non-compliance, but it does cause the Court to be inclined to give Defendant *one more opportunity* to meet its discovery obligations.

Id. at 5 (emphasis added).

Significantly, the Court stated that part of its rationale for denying evidentiary or terminating sanctions was the offer of defense counsel to make Mr. Shalit available for deposition, which the Court called a "productive step in providing to Plaintiff the necessary information about Defendant's use of the ROAR name and mark in the U.S." *Id.* at 5. Accordingly, the Court ordered that Defendant produce Mr. Shalit for deposition in Los Angeles by August 24, 2016, and that it further supplement its interrogatory responses and document production seven days before that deposition. *Id.*

In a concluding paragraph in the Sanctions Order, the Court reiterated that its denial of evidentiary and/or terminating sanctions was "without prejudice and is not necessarily the final word on these issues." *Id.* at 6. The Court acknowledged that such sanctions might be appropriate depending upon the "extent of Defendant's future compliance and the actual prejudice suffered by Plaintiff." *Id.*

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

6. In Its *Fourth* Willful Discovery Violation, Defendant Defies The Sanctions Order

Plaintiff indicated to defense counsel that it desired to go forward with Mr. Shalit's deposition on August 24, 2016. *See* Korn Decl., ¶ 11. On August 17, 2016, Defendant's new litigation counsel, John D. Fowler, contacted Plaintiff's counsel, Mr. Korn, to set up a short phone call. Mr. Korn and Mr. Fowler spoke that day, and Mr. Fowler indicated that in spite of his efforts, Defendant was simply refusing to comply with the Sanctions Order. *Id.*

Mr. Fowler confirmed that no supplemental interrogatory responses would be served, and that no additional documents were being produced. *Id.* And in fact, Defendant has failed to serve the discovery required by the Sanctions Order. *Id.*

Mr. Fowler confirmed that Mr. Shalit would not travel to Los Angeles to appear for deposition by August 24, as the Sanctions Order required, and thus the deposition has not gone forward. *Id.* Mr. Shalit refused to comply with this portion of the Court's Order despite having told Plaintiff's representatives that he travels to Los Angeles frequently and was in fact here on vacation in August 2016. *See* Suess Decl. ¶ 12.

In addition, Defendant has refused and failed to pay the sanctions of $8,137.00 by the August 24, 2016 deadline. *See* Korn Decl., ¶ 12.

Defendant's defiance of the Court's Sanctions Order is purposeful and calculated. Its principal, Mr. Shalit, personally stated that he has no intention of complying with the Sanctions Order and has no concern regarding future orders of the Court. In an August 11, 2016 email to the principals of Plaintiff—one day after the Sanctions Order issued—Mr. Shalit scoffed at the Sanctions Order, stating:

> You are mistaken to think the Orders will be enforced in the UK or that you will recover any of your legal fees. The American legal system is indeed respected around the world—however as you will find, as many an American individual and company has before and at great expense, that the legal system of England and Wales does not view things in the same way.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

See Korn Decl., ¶ 13.

III. ARGUMENT

Defendant violated the First Discovery Order and was sanctioned. It has now disregarded the Sanctions Order, believing it can do so with impunity. Defendant's wholesale violations of its discovery obligations and of the Court's Orders leaves Plaintiff with no choice but to seek a terminating sanction. For the reasons discussed below, a terminating sanction is compelled here. Nothing less will remedy the prejudice Plaintiff is suffering in being deprived of information and documents that are critical to its claims.

A. Legal Standard Governing Terminating Sanctions

Rule 37(b)(2) of the Federal Rules of Civil Procedure authorizes the Court to impose a variety of sanctions against a party for failing to obey a discovery order. Among other things, the Court may impose terminating sanctions, including by "striking pleadings in whole or in part" and by "rendering a default judgment against the disobedient party." Fed. R. Civ. P. 37(b)(2)(A)(iii)-(vi). To grant a case-dispositive sanction, "willfulness, bad faith, or fault of the party" must be shown. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002). Where that willfulness requirement is met, the Ninth Circuit then utilizes a five-part test to determine whether to impose a terminating sanction. *See Connecticut General Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007); *Valley Engineers Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1056-57 (9th Cir. 1998). The test considers:

> (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Connecticut General, 482 F.3d at 1096 (internal quotations and citation omitted).

The Ninth Circuit has recognized that "where a court order is violated, factors

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 and 2 support sanctions and 4 cuts against case-dispositive sanctions, so 3 and 5, prejudice and availability of less drastic sanctions, are decisive." *Valley Engineers*, 158 F.3d at 1057. Still, this five-part test is "not mechanical"; it "provides the district court with a way to think about what to do, not a set of conditions precedent for sanctions or a script that the district court must follow." *Connecticut General*, 482 F.3d at 1096.

B. The Court Should Impose A Terminating Sanction By Striking The Answer And Entering Default Judgment

There is no dispute as to Defendant's willfulness and bad faith. Defendant blatantly violated the First Discovery Order, and it has entirely disregarded the Sanctions Order. Further, for the reasons discussed below, *all* of the factors in the Ninth Circuit's five-part test support the imposition of a terminating sanction.

1. The Risk Of Prejudice Compels A Terminating Sanction

In discussing the two paramount factors—prejudice and the availability of less drastic sanctions—the Ninth Circuit has stated:

> [T]he most critical factor is not merely delay or docket management concerns, but truth. What is most critical for case-dispositive sanctions, regarding risk of prejudice and of less drastic sanctions, is whether the discovery violations threaten to interfere with the rightful decision of the case.

Connecticut General, 482 F.3d at 1097.

Unquestionably, Defendant's defiance of the First Discovery Order and Sanctions Order is threatening to interfere with the rightful decision of the case. Defendant is purposefully concealing information that is critical to a showing of trademark infringement and the monetary relief to which Plaintiff could be entitled.

"The core element of trademark infringement is the likelihood of confusion, i.e., whether the similarity of the marks is likely to confuse customers about the source of the products." *Brookfield Communications, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1053 (9th Cir. 1999) (internal quotations and citation omitted). Courts in the Ninth Circuit consider eight factors, often referred to as the "Sleekcraft

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

factors," in assessing a likelihood of confusion in a trademark case. *Id.* Those factors include the similarity of the marks at issue; the relatedness of the parties' products/services; the strength of the plaintiff's mark; the similarity of the marketing channels used; the degree of care likely to be exercised by the parties' customers; the accused infringer's intent in selecting the mark; and evidence of actual confusion. *Id.*

Defendant's sole defense has been that it does not conduct substantial business in the U.S. If it were true that Defendant does not conduct business in the U.S. (which it is not), this fact could theoretically have significance. The Lanham Act does not necessarily apply extraterritorially. *See Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 612-614 (9th Cir. 2010). The Act applies extraterritorially only if certain additional criteria can be met. *See id.* (affirming dismissal of trademark claims where the plaintiff failed to demonstrate that activities in Great Britain sufficiently affected commerce in the U.S. to justify extraterritorial application of the Lanham Act). Accordingly, it is important that Plaintiff demonstrate Defendant's use of the Trademark in the U.S.

Plaintiff has some evidence that Defendant is conducting business here. A document produced by Defendant admits to "strategic partnerships" with U.S. talent agencies. *See supra.* In addition, outside the discovery process, Plaintiff obtained some emails in which Defendant was reaching out to U.S. based companies to transact business and doing so under the Trademark. *See supra.* And importantly, Plaintiff has conducted millions of dollars in business with these companies that Defendant is partnering and communicating with, thus rendering it certain that confusion will occur.

But no doubt, what Plaintiff has received to this point is the tip of a much larger iceberg. Because of Defendant's repeated discovery violations, Plaintiff cannot discover the full extent of Defendant's use of the Mark in the United States. Plaintiff has never received any documents, such as agreements and

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

communications, relating to Defendant's strategic partnerships with the two U.S. based talent agencies listed in its press release—William Morris Endeavor and Octagon. Further, Plaintiff has no idea what other relationships Defendant has with U.S. based companies and what other business it is transacting with those parties. Defendant's refusal to provide this information in the face of *two* court orders prevents Plaintiff from fully establishing the considerable business which, by all appearances, Defendant is conducting in the U.S.

The information and documents Defendant is withholding are also critical to Plaintiff's proof of several of the Sleekcraft factors. The withheld information and documents could support that Defendant is using the Trademark in the same marketing channels as Plaintiff, such as by communicating with the same entities with whom Plaintiff regularly communicates. The withheld information includes documents relating to Defendant's selection of the Trademark and trademark clearance searches, which documents are probative of Defendant's intent in selecting the Mark. The withheld documents are likely to also include evidence of actual confusion—for example, emails in which the U.S. based companies express confusion as to the relationship between Plaintiff and Defendant.

Defendant's discovery violations have also stymied Plaintiff's ability to pursue claims for monetary relief. Actual damages are frequently difficult to prove in trademark cases. Accordingly, the Lanham Act permits the disgorgement of the infringer's profits in appropriate circumstances. *See* 15 U.S.C. § 1117 (permitting recovery of "defendant's profits"). Defendant has hid evidence of the business it is conducting in the U.S., which has made it impossible for Plaintiff to try to determine the profits Defendant is generating from that business.

In sum, Defendant's discovery violations are prejudicing Plaintiff's ability to prove liability and absolutely precluding Plaintiff from developing its claim for disgorgement of profits. This prejudice cannot be remedied by a mere monetary sanctions (especially in light of Defendant's refusal to comply with awards of

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

monetary sanctions). Nor will a simple evidentiary sanction suffice given that the information and documents being withheld by Defendant are probative of a variety of issues, including the channels of commerce in which Defendant is trading, its intent, and actual confusion.

As the Ninth Circuit stated in *Connecticut General*, Defendant's "pattern of deception and discovery abuse [has] made it impossible for the district court to conduct [a] trial with any reasonable assurance that the truth would be available." 482 F.3d at 1097. Defendant's discovery violations and contempt of two court orders "so damage[ ] the integrity of the discovery process that there can never be assurance of proceeding on the true facts." *Id.* The risk of prejudice to Plaintiff overwhelmingly supports a terminating sanction.

2. Less Drastic Sanctions Are Not Available

In assessing the fifth factor—the availability of less drastic sanctions—the Ninth Circuit considers "whether the court explicitly discussed alternative sanctions, whether it tried them, and whether it warned the recalcitrant party about the possibility of dismissal." *Valley Engineers*, 158 F.3d at 1057. "[I]t is not always necessary for the court to impose less serious sanctions first, or to give any explicit warning." *Id.* But in this case, the Court did all of the above.

In the process of issuing the First Discovery Order, the Court warned defense counsel of its inclination to impose monetary sanctions. *See* Korn Decl., ¶ 7. When Defendant nevertheless violated that Order, the Court issued the Sanctions Order imposing monetary sanctions. That Sanctions Order denied evidentiary or terminating sanctions but was careful to state that it was doing so "without prejudice," that the denial was "not necessarily the final word on these issues," and that the Court would reconsider case-dispositive sanctions depending on "Defendant's future compliance with discovery." Sanctions Order at 6. Moreover, the Court described the Sanctions Order as giving Defendant "one more opportunity to meet its discovery obligations." *Id.* at 5. Thus, Defendant knew perfectly well that it would likely face a case-dispositive sanction if it did not comply with the Sanctions Order. And in the face of that knowledge, Defendant defied each of the requirements of the Sanctions Order and trumpeted in email correspondence from Mr. Shalit that it had no concerns about any order of this Court being enforced in the U.K.

Less drastic sanctions will neither procure Defendant's compliance nor remedy the prejudice to Plaintiff.

3. Judicial Efficiency Supports A Terminating Sanction

The first and second factors in the Ninth Circuit's five-part test—the public's interest in expeditious resolution of litigation and the court's need to manage its dockets—both support a case-dispositive sanction. Defendant's discovery violations required Plaintiff to seek a continuance of all dates, which the Court granted. Any sanction less than a terminating sanction would likely lead to further delays, as Plaintiff would require additional time to await Defendant's compliance (if any) with whatever sanction the Court might now issue, and to then take follow-up discovery assuming Defendant did comply (which is inconceivable at this point).

4. The Policy Favoring Disposition Of Cases On Their Merits Does Not Weigh Against A Terminating Sanction

While, as a general rule, the fourth factor—the public policy favoring disposition of cases on their merits—might weigh against a case-dispositive sanction, it does not do so here. There is no dispute that Defendant is using the identical ROAR Trademark to provide the same services to the same types of clients. The only question is whether Defendant is conducting business under the Mark in the United States. Even the limited amount of information Plaintiff has been able to obtain to this point reveals that Defendant *is* using the Mark in this country. Defendant's interrogatory responses concede that it uses the ROAR Global name when communicating via email with companies in the U.S. *See* Korn Decl., Exh. 7 at 6 (Supp. Response to Interrogatory No. 5). The first page of Defendant's 28-page

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

document production references strategic partnerships with two talent agencies based in the United States. Manifestly, if Defendant fully complied with the Court's Orders, Plaintiff would have a wide assortment of evidence demonstrating Defendant's activities in the U.S. and its infringement of the Trademark here.

There is no real risk that a terminating sanction and entry of judgment in Plaintiff's favor will be at odds with the facts and merits of the case, or with the result that would occur if the case were tried on a complete record. A terminating sanction will merely provide Plaintiff with the result that it would undoubtedly receive if Defendant simply complied with the Court's orders and produced all of the information and documents in its possession demonstrating its infringement of the Trademark in the United States.

Accordingly, Pursuant to Fed. R. Civ. P. 37(b)(2), and for all of the reasons discussed above, the Court should strike Defendant's answer and enter a default judgment in Plaintiff's favor.

C. The Court Should Enter A Permanent Injunction

The Court should further enter a permanent injunction against Defendant as part of its imposition of terminating sanctions. "[T]he Lanham Act expressly provides that a court may issue an injunction, 'according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation' under Section 43(a)." *Phillip Morris USA Inc. v. Shalabi*, 352 F. Supp. 2d 1067, 1074 (C.D. Cal. 2004), quoting 15 U.S.C. § 1116(a); *see also Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072 (C.D. Cal. 2012) (imposing permanent injunction following entry of default judgment on claims for trademark infringement). To enter a permanent injunction, Plaintiff must demonstrate: (1) actual success on the merits; (2) a likelihood of irreparable injury absent injunctive relief; (3) that the balance of hardships favors Plaintiff; and (4) that an injunction will advance the public interest. *See Winter v. Natural Res. Def.*

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

Counsel, 555 U.S. 7, 20 (2008); *see also Sennheiser Electronic Corp. v. Eichler*, 2013 WL 3811775 *9-10 (C.D. Cal. Jul. 19, 2013) (discussing standard for permanent injunction in trademark cases).

The Supreme Court's decision in *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006) arguably supports that an injunction no longer follows automatically from a determination of trademark infringement. Nevertheless, even in the wake of *eBay*, courts continue to recognize that "[i]njunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant's continuing infringement," and because injunctive relief "is the remedy provided by federal and state trademark infringement statutes." *Sennheiser*, 2013 WL 3811775 *10, quoting *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180-81 (9th Cir. 1988); *see also Wecosign*, 845 F. Supp. 2d at 1083-84 (same). Accordingly, courts routinely grant preliminary and permanent injunctions in trademark infringement cases. *See id.*; *see also Reno Air Racing Assoc., Inc. v. McCord*, 452 F.3d 1126, 1138 (9th Cir. 2006) (affirming grant of permanent injunction for trademark infringement); *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1211 (9th Cir. 2000) (affirming grant of "broad injunction" for trademark infringement).

In this case, the requirements for injunctive relief are easily met:

1. Success On The Merits

The entry of default judgment against Defendant constitutes actual success on the merits. *See Wecosign*, 845 F. Supp. 2d at 1084.

2. Irreparable Harm

Defendant's continued infringement of the Trademark clearly creates a likelihood of irreparable harm. "In trademark cases, irreparable harm is typically found in a plaintiff's loss of control over their business reputation, loss of trade and loss of goodwill." *Maxim Integrated Prods., Inc. v. Quintana*, 654 F. Supp. 2d 1024, 1035 (N.D. Cal. 2009). "Irreparable injury exists where a court reasonably

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

concludes that continuing infringement will result in loss of control over the plaintiff's reputation and goodwill." *Id.* at 1035-36. As one District Court held:

> Trademarks serve as the identity of their owners and in them resides the reputation and goodwill of their owners. Thus, if another person infringes the marks, that person borrows the owner's reputation, whose quality no longer lies within the owner's control. [Citation omitted.] A trademark owner's loss of the ability to control its marks, thus, creates the potential for damage to its reputation.

CytoSport, Inc. v. Vital Pharm., Inc., 617 F. Supp. 2d 1051, 1080 (E.D. Cal. 2009).

In this case, the risk of irreparable harm is particularly acute given the similarities between the parties. Plaintiff and Defendant are both talent management companies which provide management services to actors, musicians, and similar clients in the entertainment industries. Their marks are essentially identical—ROAR and ROAR Global—and Defendant at times identifies itself simply as "ROAR."[1] *See*, *e.g.*, Suess Decl., Exh. 11. It is *certain* that confusion will occur if Defendant is allowed to continue using the Trademark; Plaintiff has already observed examples of this. *See* Suess Decl., Exh. 12. And this confusion robs Plaintiff of the ability to control its reputation—precisely the irreparable harm that injunctions are intended to prevent in cases of trademark infringement.

3. Balance Of Hardships

The balance of hardships tips decidedly in Plaintiff's favor. Plaintiff began using the ROAR Trademark in 2000. In the sixteen years since, it has built a strong reputation in that name and is well known in the entertainment industries for the A-list talent it represents. Defendant, by contrast, adopted the Trademark a decade after Plaintiff began using it and did so in spite of the fact (or perhaps because of the

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[1] The use of the additional term "Global" does not help to distinguish Defendant. Consumers who are familiar with Defendant are likely to either believe that Plaintiff's name "ROAR" is shorthand for "ROAR Global," or that ROAR Global is an international arm of Plaintiff, particularly given that Plaintiff also uses the name ROAR Asia Pacific. *See* Suess Decl. ¶ 5.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

fact) that Plaintiff owned a registered trademark in ROAR and had established goodwill in that name. Defendant cannot be heard to complain when it is enjoined from using a Trademark that was in continuous use beginning ten years earlier by a company providing similar services in the same industry.

4. The Public Interest

The public interest also supports entry of a permanent injunction. "In the trademark context, courts often define the public interest as the right of the public not to be deceived or confused." *Maxim Integrated Prod., Inc. v. Quintana*, 654 F. Supp. 2d 1024, 1036 (N.D. Cal. 2009); *see also CytoSport, Inc. v. Vital Pharm., Inc.*, 617 F. Supp. 2d 1051, 1081 (E.D. Cal. 2009) (citing cases).

Here, Defendant's continued use of the ROAR Trademark threatens to further deceive and confuse the relevant public, who will mistakenly believe that Plaintiff and Defendant are the same company or at least associated with each other. The public interest in preventing this confusion strongly supports the entry of a permanent injunction.

5. The Court Should Enter A Broad Injunction Because Of The Parties' Similarities

The Ninth Circuit has held that "[w]hen the infringing use is for a similar service, a broad injunction is 'especially appropriate.'" *GoTo.com*, 202 F.3d at 1211, quoting *Century 21 Real Estate*, 846 F.2d at 1181. Here, the parties are both talent management firms specializing in the music, film, and television industries. No doubt, then, a "broad injunction" is "especially appropriate" here. Plaintiff respectfully requests that the Court enjoin Defendant as set forth in detail in the contemporaneously filed Proposed Judgment.

D. The Court Should Award Plaintiff Its Attorneys' Fees

Plaintiff further requests an award of attorneys' fees in connection with the entry of default judgment. The Lanham Act permits an award of attorneys' fees to the prevailing party in "exceptional" cases. 15 U.S.C. § 1117(a). "The Act does not define what constitutes an 'exceptional' case, but generally a case is exceptional 'when the infringement is malicious, fraudulent, deliberate or willful.'" *Fifty-Six Hope Rd. Music, Ltd. v. A.V.E.L.A., Inc.*, 915 F. Supp. 2d 1179, 1185 (D. Nev. 2013), aff'd, 778 F.3d 1059 (9th Cir. 2015), quoting *Gracie v. Gracie*, 217 F.3d 1060, 1068 (9th Cir. 2000).

Here, Defendant's infringement is willful so as to warrant a fee award. The Complaint alleges that Defendants adopted the Trademark willfully and with knowledge of Plaintiff's rights. Dkt. No. 1, ¶ 20. If the Court enters a default judgment, that allegation is uncontested, and Defendant is liable for the willful infringement of the Mark. *See Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) ("This default sufficiently establishes Andrew's entitlement to attorneys' fees under the Lanham Act."); *Wecosign*, 845 F. Supp. 2d at 1086 (awarding fees and holding: "In the context of a default judgment, the Ninth Circuit has upheld awards of attorneys' fees 'solely because, by entry of default judgment, the district court determined, as alleged in [plaintiff's] complaint, that [defendant's] acts were committed knowingly, maliciously, and oppressively, and with an intent to … injure [plaintiff].'"), quoting *Derek Andrew*, 528 F.3d at 702.

Moreover, courts have recognized that "the non-prevailing party's litigation conduct may support a finding that the case is exceptional." *Fifty-Six Hope*, 915 F. Supp. 2d at 1185. In this case, Defendant's blatant contempt of the Court's orders renders the case exceptional, particularly given that Defendant is concealing the information and documents that could further support a showing of the exceptional nature of the case, such as documents demonstrating its knowledge of Plaintiff and the risk of consumer confusion when it selected the Trademark.

Fee awards in trademark cases are calculated using the lodestar method. *See Secalt S.A. v. Wuxi Shenxi Const. Machinery Co., Ltd.*, 668 F.3d 677, 689 (9th Cir. 2012). "[T]he district court must first determine the presumptive lodestar figure by multiplying the number of hours reasonably expended on the litigation by the

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

reasonable hourly rate." *Id.*, quoting *Intel Corp. v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993). "Next, in appropriate cases, the district court may adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 69–70 (9th Cir.1975), that have not been subsumed in the lodestar calculation." *Id.*

As set forth in the accompanying Declaration of Gregory Korn, most of the work was handled by Mr. Korn at an hourly rate ranging from $500-$525. Korn Decl. ¶ 18. Mr. Korn's credentials and experience are set forth in his declaration, and his hourly billing rate has consistently been found reasonable by courts in this Judicial District. *See, e.g.*, *Counts v. Meriwether*, 2016 WL 1165888 (C.D. Cal. Mar. 9, 2016) (awarding fees in copyright infringement action); *Sparrow LLC v. Edwin Lora, et al.*, C.D. Cal. Case No. CV-14-1188-MWF, Dkt. No. 55 (Order Granting Motion For Award Of Attorneys' Fees).

The total fees requested are $60,144.50, much of which was incurred in seeking Defendant's compliance with discovery. Korn Decl., ¶¶ 15-17. As shown in the detailed billing statements provided with this Motion, the time expended and fees incurred in this case was more than reasonable.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant this Motion in its entirety.

DATED: August 30, 2016

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

By: /s/ Gregory Korn
Gregory P. Korn
Attorneys for ROAR, LLC

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

DECLARATION OF GREGORY P. KORN

I, Gregory P. Korn, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Kinsella Weitzman Iser Kump & Aldisert LLP, attorneys of record for Plaintiff ROAR, LLC ("Plaintiff"). If called as a witness, I could and would competently testify to all the facts within my personal knowledge except where stated upon information and belief.

Defendant's Repeated Discovery Violations

2. Attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, are true and correct copies of Plaintiff's First Set of Interrogatories ("Interrogatories") and First Set of Requests for Production of Documents ("Document Requests") to Defendant ROAR Global Limited ("Defendant").

3. I provided Defendant's former counsel, Bruce Isaacs, with extensions of time to respond to the Interrogatories and Document Requests to accommodate his vacation schedule and other conflicts. Defendant eventually responded to the Interrogatories and Document Requests, true and correct copies of which are attached hereto as **Exhibit 3** and **Exhibit 4**, respectively. The responses were patently deficient, and Defendant failed to produce any of the documents that it had agreed to produce.

4. Attached hereto as **Exhibit 5** is a true and correct copy of meet-and-confer correspondence that I sent to Mr. Isaacs, on or about May 19, 2016.

5. Mr. Isaacs and I had a subsequent meet-and-confer telephone call. On that call, we seemingly resolved the discovery dispute, and Mr. Isaacs agreed that Defendant would respond fully to the Interrogatories and produce all documents by June 27, 2016. Mr. Isaacs sent me a letter on or about May 31, 2016 summarizing our agreements, a true and correct copy of which is attached hereto as **Exhibit 6**.

6. The June 27, 2016 deadline came and went without Defendant serving any supplemental responses or producing any documents. I spoke with Mr. Isaacs on

the phone after that date. He assured me that he was doing everything in his power to obtain his client's compliance with discovery, but that his client was simply not responding (at all) and not providing him the information and documents that were promised to Plaintiff. Thus, as of that June 27 date, Defendant had still not produced a single document in the case.

7. I requested and obtained a telephonic hearing with the Magistrate Judge in this case, the Honorable Alexander F. MacKinnon, to discuss an expedited resolution of Plaintiff's anticipated motion to compel. Mr. Isaacs confirmed on that call that there was no defense or good explanation for his client's discovery violations. The Court thus permitted Plaintiff to file an *ex parte* application for an order compelling discovery, which Plaintiff did. On the same conference call, the Court instructed Mr. Isaacs to tell Defendant of the Court's displeasure with Defendant's discovery violations and its inclination to impose sanctions.

8. The Court granted Plaintiff's application and compelled Defendant to supplements its written discovery responses and to produce documents by July 27, 2016. *See* Dkt. No. 24. Defendant did serve supplemental responses on that date, true and correct copies of which are attached hereto as **Exhibit 7** and **Exhibit 8**. However, the responses remained deficient. Moreover, Defendant's document production, a true and correct copy of which is attached hereto as **Exhibit 9**, was a farce. It totals just 28 pages and contains none of the key documents that were requested, including Defendant's communications with U.S. based companies.

9. Plaintiff promptly moved for evidentiary and/or terminating sanctions, as well as monetary sanctions (Dkt. No. 29) pursuant to an order of the Court expediting briefing (Dkt. No. 28). The hearing on Plaintiff's motion occurred on August 9, 2016. At the hearing, the Court indicated that its inclination was to deny evidentiary and terminating sanctions *without* prejudice, and to first award monetary sanctions to see if Defendant would then comply with its obligations.

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

10. The Court issued an Order adopting this tentative (the "Sanctions Order"). *See* Dkt. No. 34. The Sanctions Order required Defendant to produce its principal, Jonathan Shalit, for deposition in Los Angeles by August 24, 2016, to fully supplement its written discovery responses and document production no less than seven days before that deposition, and to pay sanctions of $8,137.

11. I notified defense counsel, John D. Fowler, in writing that I desired to take Mr. Shalit's deposition on August 24, 2016. Subsequently, on August 17, 2016, I had a phone call with Mr. Fowler. Mr. Fowler stated that Mr. Shalit was refusing to appear for deposition in Los Angeles (at least by the August 24, 2016 date mandated by the Sanctions Order). Mr. Fowler further stated that in spite of his efforts, Defendant was not providing him with additional information and documents, such that he could not serve supplemental discovery responses and document production as Defendant was ordered to do. And in fact, in violation of the Sanctions Order, no such responses or document production have been provided.

12. As of the current date, Defendant has also failed to pay the $8,137 in sanctions which it was ordered to pay by August 24, 2016.

13. It appears Defendant is not complying with the Court's orders because of its belief that, as a company based in the U.K., it is insulated. In fact, in an August 11, 2016 email to the principals of Plaintiff—one day after the Sanctions Order issued—Mr. Shalit scoffed at the Order, stating:

> You are mistaken to think the Orders will be enforced in the UK or that you will recover any of your legal fees. The American legal system is indeed respected around the world—however as you will find, as many an American individual and company has before and at great expense, that the legal system of England and Wales does not view things in the same way.

Plaintiff's Attorneys' Fees Request

14. I provide this portion of my declaration in support of Plaintiff's request for an award of attorneys' fees in the event of a terminating sanction.

15. Attached hereto as **Exhibit 10** are true and correct copies of detailed billing statements prepared and sent to Plaintiff by my firm, Kinsella Weitzman Iser Kump & Aldisert LLP ("KWIKA"), in the ordinary course of this case, together with a statement showing fees incurred in August 2016 that have not yet been billed but will be in due course, along with a summary of the total fees incurred. I redacted these statements as minimally as possible, and only as necessary to conceal the substance of attorney-client communications and the nature of certain confidential attorney work product.

16. As shown in these documents, the total fees incurred to date (exclusive of costs) are $66,114.50. Plaintiff is responsible for paying the entirety of this amount to my firm.

17. As depicted in **Exhibit 10,** I have chosen to exclude some of the billed entries from Plaintiff's fee request because the entries concerned matters that are related, but ancillary to, this action. Excluding those entries—which account for $5970.00 in fees—the total fees incurred by Plaintiff in connection with this action, and which are requested by this Motion, are $60,114.50 (*i.e.*, $66,114.50 minus $5970.00).

18. I performed the vast majority of work in this case. My billable rate in this case ranged from $500 to $525 per hour. My rate is reasonable and commensurate with the rates charged by attorneys in the Los Angeles area with comparable backgrounds and experience. I am a 1999 graduate of UCLA School of Law, *Order of the Coif*. Following law school, I served as a law clerk for the Honorable Stephen V. Wilson, and then as an associate at the law firms of Irell & Manella LLP, Greenberg Glusker Fields Claman & Machtinger LLP, and KWIKA. I am currently a partner at KWIKA. I specialize in the areas of entertainment and intellectual property litigation. Each year from 2007 to the present, I have been named either a "Rising Star" or "Super Lawyer" by the Southern California Super

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808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

Lawyers Magazine. I have particular, extensive experience litigating trademark infringement actions like the present action.

19. A small amount of work in this case was performed by Gregory Gabriel, a senior associate at KWIKA, who billed at an hourly rate of $425. Mr. Gabriel is a 2005 graduate of the University of California, Davis School of Law, where he earned the School of Law Medal recognizing the highest academic achievement in his graduating class. Mr. Gabriel's practice focuses extensively on trademark, copyright, and other intellectual property matters.

20. Two paralegals at KWIKA, Jeremy Schneider and Linda Mason, also performed a small amount of work in this case. Mr. Schneider billed at an hourly rate of $245, and Ms. Mason billed at an hourly rate of $150.

21. I am generally familiar with the hourly rates charged by law firms in Los Angeles for attorneys and paralegals with comparable education and background. All of the rates described above fall squarely within the range of rates charged by law firms in the Los Angeles area. My rate in particular has been found reasonable in two recent actions in this Judicial District: *Sparrow LLC v. Edwin Lora, et al.*, C.D. Cal. Case No. CV-14-1188-MWF, Dkt. No. 55 (Order Granting Motion For Award Of Attorneys' Fees); and *Counts v. Meriwether*, 2016 WL 1165888 (C.D. Cal. Mar. 9, 2016) (awarding fees in copyright infringement action).

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

Local Rule 7-3

22. To the extent required, I met and conferred with defense counsel, John D. Fowler, concerning this motion over the phone on August 17, 2016 and in writing on August 23, 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 30, 2016, at Santa Monica, California.

Gregory P. Korn

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
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DECLARATION OF GREGORY SUESS

I, Gregory Suess, declare as follows:

1. I am a member of ROAR, LLC ("ROAR"), a party in the above-entitled action. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. I am one of the founding members of ROAR, which has its main office in Beverly Hills, California. The company was formed, and we began using the ROAR trademark, in 2000. ROAR has continuously used its trademark since that time. In 2005, ROAR was issued U.S. Trademark Registration No. 3,015,285 for the use of the ROAR trademark in connection with the management of performing artists, brand representation and brand management services, and the production and organization of live entertainment events.

3. ROAR is highly successful and well-known for the talent management services that it provides. We represent musicians in connection with the creation and distribution of musical recordings and the production and organization of concerts. We also represent actors in connection with feature film and television projects.

4. ROAR's talent managers and employees use the ROAR trademark extensively in connection with the services that they provide. The trademark is also used, by way of example only, in film credits for films that ROAR produces, and on albums that ROAR is involved in producing or distributing.

5. ROAR operates globally under its trademark, as well as under similar names including ROAR Asia Pacific.

6. In the time leading up to the filing of the Complaint in this case, we became increasingly aware that Defendant ROAR Global Limited ("ROAR Global") was using our registered trademark to conduct business in the United States. We learned that ROAR Global's talent managers were reaching out to entertainment executives in the U.S. in hopes of setting up business meetings. Two

examples of this are shown in **Exhibit 11** hereto, which contain true and correct copies of emails that were forwarded to us.

7. ROAR Global's use of our trademark is irreparably damaging to ROAR in ways that cannot be remedied just by an award of monetary damages. ROAR Global's use of the same trademark, to provide the same types of services, to the same types of clients, undermines the ability of the trademark to identify ROAR and ROAR alone. People who are familiar with both companies are likely to believe that they are one in the same or are at least associated with each other. As a result, the services we provide may be attributed to ROAR Global, in which case we are losing the goodwill that goes along with our success.

8. Conversely, ROAR Global's services may be attributed to us, which is also harmful. With all due respect to ROAR Global, the clients that it represents (as shown on its website) pale in comparison to our top clients in terms of global success and popularity. It is harmful to ROAR's reputation if people in the entertainment industries attribute ROAR Global's client list, and the services ROAR Global provides, to us.

9. We have encountered several instances of people questioning or believing that ROAR and ROAR Global are the same company. True and correct copies of emails evidencing that confusion are attached hereto as **Exhibit 12**. These are only the instances of which we are aware. Inevitably, many other people have been confused and are being confused when ROAR Global's talent managers reach out to or meet with entertainment companies in the United States.

10. The injury to our reputation caused by this confusion could dissuade potential clients from hiring us. It could dissuade entertainment companies from working with us and our clients. And all of this is likely to occur in secret, without us knowing about it and being able to rectify it.

11. Absent a permanent injunction, ROAR Global's continued use of the ROAR trademark will irreparably devalue the mark and injure our reputation.

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12. I am informed that Jonathan Shalit has refused to travel to Los Angeles for a deposition as ordered by the Court. I spoke with Mr. Shalit over the phone recently as part of continuing efforts to resolve the case. Mr. Shalit told me that he travels to Los Angeles frequently, and that he was intending to be here for vacation in early August 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed August 30, 2016, at Beverly Hills, California.

Gregory Suess